

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Joseph J. Pantuso et al.

Application No.: 10/071,587

Group No.: 2194

Filed: 02/08/2002

Examiner: Truong, L.

For: EXTRACTOR SYSTEM, METHOD AND COMPUTER PROGRAM PRODUCT FOR
MANAGING NETWORK ACCESS ON A PER-APPLICATION BASIS

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P.O. Box 1450

Alexandria, VA 22313-1450

TRANSMITTAL OF APPEAL BRIEF
(PATENT APPLICATION--37 C.F.R. § 41.37)

1. Transmitted herewith is an Appeal Brief in this application, with respect to the Notice of Appeal filed March 13, 2007, which reinstates the appeal originally instated by the Notice of Appeal filed on June 29, 2005, and the original Appeal Brief filed July 13, 2005.

2. STATUS OF APPLICANT

This application is on behalf of other than a small entity.

3. FEE FOR FILING APPEAL BRIEF

Pursuant to 37 C.F.R. § 1.17(c), the fee for filing the Appeal Brief has already been paid. However, the Commissioner if authorized to charge any fees that may be due to deposit account 50-1351 (Order No.NAHP096).

4. EXTENSION OF TERM

The proceedings herein are for a patent application and the provisions of 37 C.F.R. § 1.136 apply. Applicant's believe no extension of time is necessary. If an extension of time is required, please consider this a petition therefore and charge deposit account 50-1351 (Order No. NAHP096).

5. TOTAL FEE DUE

The total fee due is:

Appeal brief fee

\$0.00 (previously paid on July 13, 2007)

Extension fee (if any)

\$0.00

TOTAL FEE DUE

\$0.00

6. FEE PAYMENT

Applicant believes that only the above fees are due in connection with the filing of this paper because the Appeal Brief fee was paid with a previous submission. However, the Commissioner is authorized to charge any additional fees that may be due (e.g. for any reason including, but not limited to fee changes, etc.) to deposit account 50-1351 (Order No. NA11P096).

7. FEE DEFICIENCY

If any additional extension and/or fee is required, and if any additional fee for claims is required, charge Deposit Account No. 50-1351 (Order No. NA11P096).

/KEVINZILKA/

Signature of Practitioner

Kevin J. Zilka

Zilka-Kotab, PC

P.O. Box 721120

San Jose, CA 95172-1120

USA

Reg. No.: 41,429

Tel. No.: 408-971-2573

Customer No.: 28875

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:)	
)	
Pantuso et al.)	Group Art Unit: 2194
)	
Application No. 10/071,587)	Examiner: Truong, LeChi
)	
Filed: February 08, 2002)	Date: May 14, 2007
)	
For: EXTRACTOR SYSTEM, METHOD)	
AND COMPUTER PROGRAM PRODUCT)	
FOR MANAGING NETWORK ACCESS)	
ON A PER-APPLICATION BASIS)	
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Commissioner for Patents
P.O. Box 1450
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ATTENTION: Board of Patent Appeals and Interferences

APPEAL BRIEF (37 C.F.R. § 41.37)

Transmitted herewith is an Appeal Brief in this application, with respect to the Notice of Appeal filed March 13, 2007, which reinstates the appeal originally instated by the Notice of Appeal filed on June 29, 2005, and the original Appeal Brief filed July 13, 2005.

The fees required under § 1.17, and any required petition for extension of time for filing this brief and fees therefor, are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

This brief contains these items under the following headings, and in the order set forth below (37 C.F.R. § 41.37(c)(i)):

- I REAL PARTY IN INTEREST
- II RELATED APPEALS AND INTERFERENCES
- III STATUS OF CLAIMS

IV	STATUS OF AMENDMENTS
V	SUMMARY OF CLAIMED SUBJECT MATTER
VI	GROUND OF REJECTION TO BE REVIEWED ON APPEAL
VII	ARGUMENT
VIII	CLAIMS APPENDIX
IX	EVIDENCE APPENDIX
X	RELATED PROCEEDING APPENDIX

The final page of this brief bears the practitioner's signature.

I REAL PARTY IN INTEREST (37 C.F.R. § 41.37(c)(1)(i))

The real party in interest in this appeal is McAfee, Inc.

II. RELATED APPEALS AND INTERFERENCES (37 C.F.R. § 41.37(c) (1)(ii))

With respect to other prior or pending appeals, interferences, or related judicial proceedings that will directly affect, or be directly affected by, or have a bearing on the Board's decision in the pending appeal, a prior appeal was noted on June 29, 2005, and was reinstated on December 12, 2005, in the present application.

A Related Proceedings Appendix is appended hereto.

III STATUS OF CLAIMS (37 C.F.R. § 41.37(e) (1)(iii))

A. TOTAL NUMBER OF CLAIMS IN APPLICATION

Claims in the application are: 1-29

B. STATUS OF ALL THE CLAIMS IN APPLICATION

1. Claims withdrawn from consideration: None
2. Claims pending: 1-29
3. Claims allowed: None
4. Claims rejected: 1-29
5. Claims cancelled: None

C. CLAIMS ON APPEAL

The claims on appeal are: 1-29

See additional status information in the Appendix of Claims.

IV STATUS OF AMENDMENTS (37 C.F.R. § 41.37(c)(1)(iv))

As to the status of any amendment filed subsequent to final rejection, the Amendment submitted on 03/30/2005 was entered by the Examiner.

V SUMMARY OF CLAIMED SUBJECT MATTER (37 C.F.R. § 41.37(c)(1)(v))

With respect to a summary of Claim 1, as shown in Figure 5 et al., a method is provided for management of network access on a per application basis. In use, applications are selected from a group of applications adapted for working in conjunction with a first application program interface to gain access to a network (e.g. item 501 of Figure 5, etc.), the first application program interface adapted for permitting the applications to gain access to the network. Additionally, a second application program interface adapted for precluding the applications from accessing the network is installed (e.g. item 504 of Figure 5, etc.). Further, the selected applications are wrapped for allowing the selected applications to access the network via the second application program interface (e.g. item 506 of Figure 5, etc.), where the selected applications would otherwise be precluded network access by the second application program interface. See, for example, page 5, lines 3-11; and page 5, line 23 – page 6, line 2 et al.

With respect to a summary of Claim 8, as shown in Figure 5 et al., a computer program product is provided for management of network access on a per application basis. In use, computer code is provided for selecting applications from a group of applications adapted for working in conjunction with a first application program interface to gain access to a network (e.g. item 501 of Figure 5, etc.), the first application program interface adapted for permitting the applications to gain access to the network. Additionally, computer code is provided for installing a second application program interface adapted for precluding the applications from accessing the network (e.g. item 504 of Figure 5, etc.). Further, computer code is provided for wrapping the selected applications for allowing the selected applications to access the network via the second application program interface (e.g. item 506 of Figure 5, etc.), where the selected applications would otherwise be precluded network access by the second application program interface. See, for example, page 5, lines 3-11; and page 5, line 23 – page 6, line 2 et al.

With respect to a summary of Claim 15, as shown in Figure 5 et al., a system is provided for management of network access on a per application basis. In use, logic is provide for selecting applications from a group of applications adapted for working in conjunction with a first application program interface to gain access to a network (e.g. item 501 of Figure 5, etc.), the first application program interface adapted for permitting the applications to gain access to the

network . . . Additionally, logic is provided for installing a second application program interface adapted for precluding the applications from accessing the network (e.g. item 504 of Figure 5, etc.). Further, logic is provided for wrapping the selected applications for allowing the selected applications to access the network via the second application program interface (e.g. item 506 of Figure 5, etc.), where the selected applications would otherwise be precluded network access by the second application program interface. See, for example, page 5, lines 3-11; and page 5, line 23 — page 6, line 2 et al.

With respect to a summary of Claim 22, as shown in Figures 2 and 5 et al., a system is provided for management of network access on a per application basis. In use, means is provided for selecting applications (e.g. item 210 of Figure 2, etc.) from a group of applications adapted for working in conjunction with a first application program interface to gain access to a network (e.g. item 501 of Figure 5, etc.), the first application program interface adapted for permitting the applications to gain access to the network. Additionally, means is provided for installing (e.g. item 210 of Figure 2, etc.) a second application program interface adapted for precluding the applications from accessing the network (e.g. item 504 of Figure 5, etc.). Further, means is provided for wrapping (e.g. item 210 of Figure 2, etc.) the selected applications for allowing the selected applications to access the network via the second application program interface (e.g. item 506 of Figure 5, etc.), where the selected applications would otherwise be precluded network access by the second application program interface. See, for example, page 5, lines 3-11; page 5, line 23 — page 6, line 2; and page 8, lines 23-25 et al.

With respect to a summary of Claim 23, as shown in Figures 2 and 3 et al., a data structure stored in memory is provided for management of network access on a per application basis. In use, an application program interface object is provided (e.g. item 320' of Figure 3, etc.) for precluding a plurality of applications from accessing a network (e.g. item 235 of Figure 2, etc.). Also, a permitting application program interface (e.g. item 320 of Figure 3, etc.) is adapted for permitting the applications to gain access to the network. Additionally, a wrapper object is provided (e.g. item 322 of Figure 3, etc.) for wrapping selected applications (e.g. item 304 of Figure 3, etc.) for allowing the selected applications to access the network via the application program interface object, where the selected applications would otherwise be precluded network

access by the application program interface object. See, for example, page 5, lines 3-11; page 5, line 23 — page 6, line 2; and page 10, lines 7-20 et al.

With respect to a summary of Claim 24, as shown in Figure 5 et al., a method is provided for management of network access on a per application basis. In use, a precluding application program interface adapted for precluding a plurality of applications from accessing a network is installed (e.g. item 504 of Figure 5, etc.), wherein a permitting application program interface is adapted for permitting the applications to gain access to the network (e.g. item 501 of Figure 5, etc.). Additionally, a plurality of selected applications is wrapped for allowing the selected applications to access the network via the precluding application program interface (e.g. item 506 of Figure 5, etc.), where the selected applications would otherwise be precluded network access by the precluding application program interface. See, for example, page 5, lines 3-11; and page 5, line 23 — page 6, line 2 et al.

Of course, the above citations are merely examples of the above claim language and should not be construed as limiting in any manner.

VI GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL (37 C.F.R. § 41.37(c)(1)(vi))

Following, under each issue listed, is a concise statement setting forth the corresponding ground of rejection.

Issue # 1: The Examiner has rejected Claims 15-29 under 35 U.S.C. 101 as being directed toward non-statutory subject matter.

Issue # 2: The Examiner has rejected Claims 1, 8, 15, 22-24, 26 and 29 under 35 U.S.C. 103(a) as being unpatentable over Lee et al. (U.S. Publication No. 2003/0135465 A1), in view of Sitbon et al. (U.S. Patent No. 5,568,487), and further in view of Schwabe (U.S. Patent No. 6,651,186).

Issue #3: The Examiner has rejected Claim 2 under 35 U.S.C. 103(a) as being unpatentable over Lee et al. (U.S. Publication No. 2003/0135465 A1), in view of Sitbon et al. (U.S. Patent No. 5,568,487), in view of Schwabe (U.S. Patent No. 6,651,186), and further in view of OPT (Optimizations).

Issue #4: The Examiner has rejected Claims 2-6, 9-13, 16-20 and 25 under 35 U.S.C. 103(a) as being unpatentable over Lee et al. (U.S. Publication No. 2003/0135465 A1), in view of Sitbon et al. (U.S. Patent No. 5,568,487), in view of Schwabe (U.S. Patent No. 6,651,186), in view of OPT (Optimizations), and further in view of Moeller (U.S. Patent No. 5,473,777).

Issue #5: The Examiner has rejected Claims 7, 14 and 21 under 35 U.S.C. 103(a) as being unpatentable over Lee et al. (U.S. Publication No. 2003/0135465 A1), in view of Sitbon et al. (U.S. Patent No. 5,568,487), in view of Schwabe (U.S. Patent No. 6,651,186), and further in view of Alexander et al. (U.S. Patent No. 6,748,343).

Issue #6: The Examiner has rejected Claim 27 under 35 U.S.C. 103(a) as being unpatentable over Lee et al. (U.S. Publication No. 2003/0135465 A1), in view of Sitbon et al. (U.S. Patent No. 5,568,487), in view of Schwabe (U.S. Patent No. 6,651,186), and further in view of Michael Norton (Basics of Network Segmentation: Switching and Bridging).

Issue #7: The Examiner has rejected Claim 28 under 35 U.S.C. 103(a) as being unpatentable over Lee et al. (U.S. Publication No. 2003/0135465 A1), in view of Sitbon et al. (U.S. Patent No. 5,568,487), in view of Schwabe (U.S. Patent No. 6,651,186), and further in view of Bermudez et al. (U.S. Patent No. 6,874,149).

VII ARGUMENT (37 C.F.R. § 41.37(c)(1)(vii))

The claims of the groups noted below do not stand or fall together. In the present section, appellant explains why the claims of each group are believed to be separately patentable.

Issue # 1:

The Examiner has rejected Claims 15-29 under 35 U.S.C. 101 as being directed toward non-statutory subject matter.

Group #1: Claims 15-22

The Examiner has argued that Claims 15-22 are non-statutory because they are not tangibly embodied in a manner so as to be executable. Specifically, the Examiner has stated that “[s]electing, installing, [and] wrapping appear to be software functions, which are not tangible.”

Appellant respectfully disagrees and points out that appellant’s claimed “logic” (Claim 15) and “means” (Claim 22) for completing appellant’s specific claim language.

Group #2: Claim 23

The Examiner has rejected Claim 23 as not being tangible. Specifically, the Examiner has argued that “the data structure stored in a memory claim do[es] not require use of [a] hardware computer to perform, and would not result in a practical application producing a useful, concrete, an[d] tangible result. Appellant respectfully disagrees. First, appellant respectfully asserts that a data structure “stored in memory” is tangible. Second, appellant respectfully asserts that appellant claims “wrapping selected applications for allowing the selected applications to access the network via the application program interface object, where the selected applications would otherwise be precluded network access by the application program interface object,” which is clearly a useful, concrete and tangible result. Thus, appellant respectfully disagrees with the Examiner’s rejection.

Group #3: Claim 24

Appellant respectfully points out that the Examiner has failed to provide any explanation for rejecting Claim 24 under 35 U.S.C. 101. However, appellant respectfully asserts that appellant claims a “method for management of network access on a per application basis,” and that such “method” is clearly statutory.

Group #4: Claims 25-29

Appellant respectfully points out that the Examiner has failed to provide any explanation for rejecting Claims 25-29 under 35 U.S.C. 101. However, appellant respectfully asserts that appellant claims a “method for management of network access on a per application basis” (see independent Claim 1 for context), and that such “method” of dependent Claims 25-29 is clearly statutory.

Issue # 2:

The Examiner has rejected Claims 1, 8, 15, 22-24, 26 and 29 under 35 U.S.C. 103(a) as being unpatentable over Lee et al. (U.S. Publication No. 2003/0135465 A1), in view of Sitbon et al. (U.S. Patent No. 5,568,487), and further in view of Schwabe (U.S. Patent No. 6,651,186).

Group # 1: Claims 1, 8, 15, and 22

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on appellant’s disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir.1991).

With respect to the first element of the *prima facie* case of obviousness, the Examiner has argued that “[i]t would have been obvious to one of the ordinary skill in the art at the time the invention was made to modify the teaching of Lee, Sitbon and Schwabe because Schwabe’s selecting applications for working in conjunction with a first application program interface would improve the efficiency of Lee and Sitbon’s systems by allowing program verifying to ensure binary compatibility.” Appellant respectfully asserts that it would not have been obvious to combine the teachings of the Lee, Sitbon and Schwabe references, especially in view of the vast evidence to the contrary.

Appellant respectfully asserts that the combination of the Schwabe, Lee and Sitbon references would not have been obvious since Schwabe relates to verifying a program (see Abstract) while Lee relates to securing content stored on media (see Abstract), and Sitbon relates to an address conversion process. These are clearly *non-analogous arts*. “In order to rely on a reference as a basis for rejection of an [appellant’s] invention, the reference must either be in the field of [appellant’s] endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned.” In re Oetiker, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). See also In re Deminski, 796 F.2d 436, 230 USPQ 313 (Fed. Cir. 1986); In re Clay, 966 F.2d 656, 659, 23 USPQ2d 1058, 1060-61 (Fed. Cir. 1992). In view of the vastly different types of problems a program verification system, a content security system and an address conversion process address, the Examiner’s proposed combination is inappropriate.

Still yet, appellant respectfully disagrees with the Examiner’s argument that it would have been obvious to combine the foregoing references “because Schwabe’s selecting applications for working in conjunction with a first application program interface would improve the efficiency of Lee and Sitbon’s systems by allowing program verifying to ensure binary compatibility.” Appellant respectfully disagrees with the Examiner’s assertion since, as noted above, Schwabe does not teach any sort of “selecting applications,” as noted by the Examiner, but instead only teaches determining if a program is consistent with an API definition file. Thus, for at least these reasons, the first element of the *prima facie* case of obviousness is clearly not met.

Moreover, appellant respectfully asserts that such references also fail to satisfy the third element of the *prima facie* case of obviousness. For example, with respect to the independent claims, the

Examiner has relied on Col. 12, lines 13-16 in Schwabe to make a prior art showing of appellant's claimed "selecting applications from a group of applications adapted for working in conjunction with a first application program interface to gain access to a network" (see this or similar, but not necessarily identical language in the independent claims).

Appellant respectfully asserts that such excerpt from Schwabe merely discloses "determin[ing] whether the first program unit implementation is consistent with a first program unit API definition file associated with the first program unit implementation." Clearly, determining whether a program is consistent with an API definition file for purposes of "remote verification" of the program (Col. 12, lines 10-11), as in Schwabe, does not even suggest any sort of selecting applications, as appellant claims, let alone "selecting applications from a group of applications" that are "adapted for working in conjunction with a first application program interface" (emphasis added), as specifically claimed.

In fact, appellant respectfully points out that Col. 12, lines 10-11 in Schwabe expressly disclose that the "remote verification uses in API definition file for each [program unit] implementation" (emphasis added). Appellant respectfully asserts that verifying each program unit implementation, as in Schwabe, fails to teach or suggest appellant's claimed "selecting applications from a group of applications," as claimed. Furthermore, such excerpt from Schwabe does not even mention a network, and thus does not meet appellant's claimed "group of applications adapted for working in conjunction with a first application program interface to gain access to a network" (emphasis added), as claimed by appellant.

Additionally, with respect to the independent claims, the Examiner has relied on the following excerpts from Lee to make a prior art showing of appellant's claimed "group of applications adapted for working in conjunction with a first application program interface to gain access to a network, the first application program interface adapted for permitting the applications to gain access to the network" (see this or similar, but not necessarily identical language in the independent claims).

"The content elements 502 and 504 are encrypted." {Paragraph 0141, lines 5-7 - emphasis added}

"...an entity controlling certification of hosts. The certificate 514 specifies the secure APIs 508 to which an application 516 may have access." (Paragraph 0145, lines 6-8 - emphasis added)

Appellant respectfully asserts that the excerpts relied upon by the Examiner merely teach that "[t]he certificate 514 specifies the secure APIs 508 to which an application 516 may have access" (emphasis added) and that "[t]he content elements 502 and 504 are encrypted." However, simply disclosing secure APIs to which an application may have access, as in Lee, fails to even suggest a "first application program interface adapted for permitting the applications to gain access to the network" (emphasis added), as claimed by appellant. In particular, the excerpts from Lee relied on by the Examiner only disclose secure APIs and an application which accesses them, which cannot meet appellant's claimed "first application program interface," in the context claimed.

Still with respect to appellant's claimed "group of applications adapted for working in conjunction with a first application program interface to gain access to a network, the first application program interface adapted for permitting the applications to gain access to the network," the Examiner has admitted that "Lee does not explicitly [teach] network access," but has argued that "Sitbon teaches network access (access to these network, col 1, ln 1-12)."

Appellant respectfully disagrees and asserts that, in Col. 1, lines 9-14, Sitbon merely teaches that "[t]he present invention relates to a process of address conversion for porting telecommunications applications from the TCP/IP network to the OSI-CO network, access to these networks being authorized by way of what is known as a 'socket' interface for the TCP/IP network, and a 'XTI' interface for the OSI-CO network" (emphasis added). However, simply disclosing that access to networks is authorized by way of a socket interface, in no way suggests a "first application program interface adapted for permitting the applications to gain access to the network" (emphasis added), as claimed by appellant.

Furthermore, with respect to the independent claims, the Examiner has relied on Paragraph 0129, lines 1-2 and Paragraph 0142, lines 7-8 from Lee, as excerpted below, to make a prior art showing of appellant's claimed "installing a second application program interface adapted for precluding the applications from accessing the network" (see this or similar, but not necessarily identical language in the independent claims).

"Engine 308 presents APIs to the players 310 and TPDRMs and CKDPMs to support a plurality of the usage..." (Paragraph 0129, lines 1-2 - emphasis added)

"The secure APIs 508 have restricted access to content 502 and 504 in that only secure APIs may retrieve..." (Paragraph 0142, lines 7-8 - emphasis added)

"Block level access to content on a hard drive of a computer is generally accessible via only a block driver. The firmware prevents open access by not supporting block access for block drivers. The file system may be hierarchical in nature. In one embodiment, the media disk may have a writeable, write-once portion, and a read-only..." ("right col", lines 14-19 - emphasis added)

Appellant respectfully asserts that the excerpts relied upon by the Examiner merely teach that an "[e]ngine 308 presents APIs to the players," that "[t]he secure APIs 508 have restricted access to content," and that "firmware prevents open access [to content] by not supporting block access for block drivers" (emphasis added). However, simply disclosing that APIs have restricted access to content, and that firmware prevents open access to content, as in Lee, fails to even suggest any sort of installation, as claimed, let alone "installing a second application program interface adapted for precluding the applications from accessing the network" (emphasis added), as claimed by appellant.

Further, with respect to the independent claims, the Examiner has relied on the following excerpts from Sitbon to make a prior art showing of appellant's claimed "wrapping the selected applications for allowing the selected applications to access the network via the second application program interface" (see this or similar, but not necessarily identical language in the independent claims).

"...manipulate file descriptors and are capable of manipulating a "socket" file descriptor. These various calls SC+SY are then rerouted to the wrapper W, at the moment of the link editing phase before the executable is obtained. The second object of the wrapper W is to automatically convert the addresses specific to the TCP/IP network into addresses of the OSI/CO network, and to enable the passage from the TCP/IP protocol to the OSI/CO protocol." (Col. 3, lines 5-12 - emphasis added).

"[t]he wrapper W is designed in the form of a library that assures the interface service between the application APP intended so that it can be used in a TCP/IP network and the OSI communications layers (OSI network) by way of the XTI interface, where the first communications

layer accessed is the OSI transport layer, and the application APP..."
(Col. 4, lines 3-8 - emphasis added)

Appellant respectfully asserts that the excerpts relied upon by the Examiner merely teach that "the wrapper... automatically convert[s] the addresses specific to the TCP/IP network into addresses of the OSI/CO network." Clearly, a wrapper that simply converts addresses, as in Sitbon, fails to disclose "wrapping the selected applications for allowing the selected applications to access the network via the second application program interface" (emphasis added), as claimed.

Further, with respect to the independent claims, the Examiner has relied on the Col. 3, lines 11-14 from Sitbon, as excerpted above, to make a prior art showing of appellant's claimed technique "where the selected applications would otherwise be precluded network access by the second application program interface" (see this or similar, but not necessarily identical language in the independent claims). In particular, the Examiner has argued that "the call can not be used to OSI/CO interface until the call is converted to the address of the OSI/OC network" such that "the calls are impossible to be used by the application to access [the] network."

Appellant respectfully disagrees. First, appellant respectfully points out that appellant claims that "the selected applications would otherwise be precluded network access by the second application program interface" (emphasis added), as claimed, and not simply that "the calls are impossible to be used by the application to access [the] network" (emphasis added), as alleged by the Examiner. Second, when read in context, appellant specifically claims that the "second application program interface [is] adapted for precluding the applications from accessing the network" (emphasis added), as claimed, which is clearly not taught by Sitbon's disclosure of converting addresses to enable the passage from TCP/IP protocol to OSI/CO protocol (Col. 3, lines 9-12).

Appellant respectfully asserts that at least the first and third elements of the *prima facie* case of obviousness have not been met, since it would not have been obvious to combine the prior art references, and since the prior art excerpts, as relied upon by the Examiner, fail to teach or suggest all of the claim limitations, as noted above.

Group #2: Claim 23

With respect to independent Claim 23, the Examiner has relied on Paragraph 0129, lines 1-2 and Paragraph 0142, lines 7-8 from Lee to make a prior art showing of appellant's claimed "application program interface object for precluding a plurality of applications from accessing a network."

Appellant respectfully asserts that the excerpts relied upon by the Examiner merely teach that an "[e]ngine 308 presents APIs to the players," that "[t]he secure APIs 508 have restricted access to content," and that "firmware prevents open access [to content] by not supporting block access for block drivers" (emphasis added). However, simply disclosing that APIs have restricted access to content, and that firmware prevents open access to content, as in Lee, fails to even suggest an "application program interface object for precluding a plurality of applications from accessing a network" (emphasis added), as claimed by appellant.

In addition, with respect to independent Claim 23, the Examiner has relied on Paragraph [0141], lines 5-7 and Paragraph [0145], lines 6-8 in Lee to make a prior art showing of appellant's claimed technique "wherein a permitting application program interface is adapted for permitting the applications to gain access to the network."

Appellant respectfully asserts that the excerpts relied upon by the Examiner merely teach that "[t]he certificate 514 specifies the secure APIs 508 to which an application 516 may have access" (emphasis added) and that "[t]he content elements 502 and 504 are encrypted." However, simply disclosing secure APIs to which an application may have access, as in Lee, fails to even suggest that "a permitting application program interface is adapted for permitting the applications to gain access to the network" (emphasis added), as claimed by appellant. In particular, the excerpts from Lee relied on by the Examiner only disclose secure APIs and an application which accesses them, which cannot meet appellant's claimed "permitting application program interface," in the context claimed.

Still with respect to appellant's claimed technique "wherein a permitting application program interface is adapted for permitting the applications to gain access to the network," the Examiner

has admitted that “Lee does not explicitly [teach] network access,” but that “Sitbon teaches network access (access to these network, col 1, ln 1-12).”

Appellant respectfully disagrees and asserts that in Col. 1, lines 9-14, Sitbon merely teaches that “[t]he present invention relates to a process of address conversion for porting telecommunications applications from the TCP/IP network to the OSI-CO network, access to these networks being authorized by way of what is known as a ‘socket’ interface for the TCP/IP network, and a ‘XTI’ interface for the OSI-CO network” (emphasis added). However, simply disclosing that access to networks is authorized by way of a socket interface, in no way suggests that a “permitting application program interface is adapted for **permitting the applications** to **gain access** to the network” (emphasis added), as claimed by appellant.

Furthermore, with respect to independent Claim 23, the Examiner has relied on Col. 3, lines 5-12 and Col. 4, lines 3-8 in Sitbon to make a prior art showing of appellant’s claimed “wrapper object for wrapping selected applications for allowing the selected applications to access the network via the application program interface object.”

Appellant respectfully asserts that the excerpts relied upon by the Examiner merely teach that “the wrapper... automatically convert[s] the addresses specific to the TCP/IP network into addresses of the OSI/CO network.” Clearly, a wrapper that simply converts addresses, as in Sitbon, fails to disclose “wrapping selected applications for allowing the selected applications to access the network via the application program interface object” (emphasis added), as claimed.

Further, with respect to independent Claim 23, the Examiner has relied on the Col. 3, lines 11-14 from Sitbon, as excerpted above, to make a prior art showing of appellant’s claimed technique “where the selected applications would otherwise be precluded network access by the application program interface object.” In particular, the Examiner has argued that “the call can not be used to OSI/CO interface until the call is converted to the address of the OSI/OC network” such that “the calls are impossible to be used by the application to access [the] network.”

Appellant respectfully disagrees. First, appellant respectfully points out that appellant claims that “the selected applications would otherwise be precluded network access by the application

program interface object” (emphasis added), as claimed, and not simply that “the calls are impossible to be used by the application to access [the] network” (emphasis added), as alleged by the Examiner. Second, when read in context, appellant specifically claims that the “application program interface object [is] for precluding a plurality of applications from accessing a network” (emphasis added), as claimed, which is clearly not taught by Sitbon’s disclosure of converting addresses to enable the passage from TCP/IP protocol to OSI/CO protocol (Col. 3, lines 9-12).

Appellant respectfully asserts that at least the first and third elements of the *prima facie* case of obviousness have not been met, since it would not have been obvious to combine the prior art references, and since the prior art excerpts, as relied upon by the Examiner, fail to teach or suggest all of the claim limitations, as noted above.

Group 3: Claims 24 and 26

With respect to independent Claim 24, the Examiner has relied on Paragraph 0129, lines 1-2 and Paragraph 0142, lines 7-8 from Lee to make a prior art showing of appellant’s claimed “installing a precluding application program interface adapted for precluding a plurality of applications from accessing a network.”

Appellant respectfully asserts that the excerpts relied upon by the Examiner merely teach that an “[e]ngine 308 presents APIs to the players,” that “[t]he secure APIs 508 have restricted access to content,” and that “firmware prevents open access [to content] by not supporting block access for block drivers” (emphasis added). However, simply disclosing that APIs have restricted access to content, and that firmware prevents open access to content, as in Lee, fails to even suggest any sort of installation, as claimed, let alone “installing a precluding application program interface adapted for precluding a plurality of applications from accessing a network” (emphasis added), as claimed by appellant.

In addition, with respect to independent Claim 24, the Examiner has relied on Paragraph [0141], lines 5-7 and Paragraph [0145], lines 6-8 in Lee to make a prior art showing of appellant’s claimed technique “wherein a permitting application program interface is adapted for permitting the applications to gain access to the network.”

Appellant respectfully asserts that the excerpts relied upon by the Examiner merely teach that “[t]he certificate 514 specifies the secure APIs 508 to which an application 516 may have access” (emphasis added) and that “[t]he content elements 502 and 504 are encrypted.” However, simply disclosing secure APIs to which an application may have access, as in Lee, fails to even suggest that a “a permitting application program interface is adapted for permitting the applications to gain access to the network” (emphasis added), as claimed by appellant. In particular, the excerpts from Lee relied on by the Examiner only disclose secure APIs and an application which access them, which cannot meet appellant’s claimed “permitting application program interface,” in the context claimed.

Still with respect to appellant’s claimed technique “wherein a permitting application program interface is adapted for permitting the applications to gain access to the network,” the Examiner has admitted that “Lee does not explicitly [teach] network access,” but that “Sitbon teaches network access (access to these network, col 1, ln 1-12).”

Appellant respectfully disagrees and asserts that in Col. 1, lines 9-14, Sitbon merely teaches that “[t]he present invention relates to a process of address conversion for porting telecommunications applications from the TCP/IP network to the OSI-CO network, access to these networks being authorized by way of what is known as a ‘socket’ interface for the TCP/IP network, and a ‘XTI’ interface for the OSI-CO network” (emphasis added). However, simply disclosing that access to networks is authorized by way of a socket interface, in no way suggests that a “permitting application program interface is adapted for permitting the applications to gain access to the network” (emphasis added), as claimed by appellant.

Furthermore, with respect to independent Claim 24, the Examiner has relied on Col. 3, lines 5-12 and Col. 4, lines 3-8 in Sitbon to make a prior art showing of appellant’s claimed “wrapping a plurality of selected applications for allowing the selected applications to access the network via the precluding application program interface.”

Appellant respectfully asserts that the excerpts relied upon by the Examiner merely teach that “the wrapper... automatically convert[s] the addresses specific to the TCP/IP network into

addresses of the OSI/CO network.” Clearly, a wrapper that simply converts addresses, as in Sitbon, fails to disclose “wrapping a plurality of selected applications for allowing the selected applications to access the network via the precluding application program interface” (emphasis added), as claimed.

Further, with respect to independent Claim 24, the Examiner has relied on the Col. 3, lines 11-14 from Sitbon, as excerpted above, to make a prior art showing of appellant’s claimed technique “where the selected applications would otherwise be precluded network access by the precluding application program interface.” In particular, the Examiner has argued that “the call can not be used to OSI/CO interface until the call is converted to the address of the OSI/OC network” such that “the calls are impossible to be used by the application to access [the] network.”

Appellant respectfully disagrees. First, appellant respectfully points out that appellant claims that “the selected applications would otherwise be precluded network access by the precluding application program interface” (emphasis added), as claimed, and not simply that “the calls are impossible to be used by the application to access [the] network” (emphasis added), as alleged by the Examiner. Second, when read in context, appellant specifically claims that the “precluding application program interface [is] adapted for precluding a plurality of applications from accessing a network” (emphasis added), as claimed, which is clearly not taught by Sitbon’s disclosure of converting addresses to enable the passage from TCP/IP protocol to OSI/CO protocol (Col. 3, lines 9-12).

Appellant respectfully asserts that at least the first and third elements of the *prima facie* case of obviousness have not been met, since it would not have been obvious to combine the prior art references, and since the prior art excerpts, as relied upon by the Examiner, fail to teach or suggest all of the claim limitations, as noted above.

Group #4: Claim 29

The Examiner has relied on Col. 2, lines 25-30 in Sitbon to make a prior art showing of appellant’s claimed technique “wherein the second application program interface is separate from the first application program interface.”

Appellant respectfully asserts that the excerpt from Sitbon relied on by the Examiner simply teaches “passage from the TCP/IP protocol to the OSI/CO protocol” where “the ‘socket’ interface calls, and the system calls...intended for the TCP/IP network are converted and processed.” Clearly, simply disclosing converting calls between protocols, as in Sitbon, fails to even mention a first application program interface and a second application program interface, as appellant claims, and especially not where “the second application program interface is separate from the first application program interface,” as claimed.

Appellant respectfully asserts that at least the first and third elements of the *prima facie* case of obviousness have not been met, since it would not have been obvious to combine the prior art references, and since the prior art excerpts, as relied upon by the Examiner, fail to teach or suggest all of the claim limitations, as noted above.

Issue #3:

The Examiner has rejected Claim 2 under 35 U.S.C. 103(a) as being unpatentable over Lee et al. (U.S. Publication No. 2003/0135465 A1), in view of Sitbon et al. (U.S. Patent No. 5,568,487), in view of Schwabe (U.S. Patent No. 6,651,186), and further in view of OPT (Optimizations).

Group #1: Claim 2

With respect to Claim 2, the Examiner has relied on Col. 3, lines 9-12 (excerpted below), from Sitbon, to make a prior art showing of appellant’s claimed technique “wherein the selected applications are wrapped with a wrapper adapted for compressing data in a portable executable (PE) image that provides compression of data associated with the applications.”

“object of the wrapper W is to automatically convert the addresses specific to the TCP/IP network into addresses of the OSI/CO network, and to enable the passage from the TCP/IP protocol to the OSI/CO protocol. After conversion,...” (Col. 3, lines 9-12 – emphasis added)

Appellant respectfully asserts that the excerpt from Sitbon relied upon by the Examiner merely teaches that “[t]he second object of the wrapper W is to automatically convert the addresses

specific to the TCP/IP network into addresses of the OSI/CO network” (emphasis added). However, converting addresses, as in Sitbon, fails to even suggest that “the selected applications are wrapped with a wrapper adapted for compressing data in a portable executable (PE) image that provides compression of data associated with the applications” (emphasis added), as specifically claimed by appellant.

Appellant respectfully asserts that at least the first element of the *prima facie* case of obviousness has not been met, since the prior art excerpts, as relied upon by the Examiner, fail to teach or suggest all of the claim limitations, as noted above.

Issue #4

The Examiner has rejected Claims 2-6, 9-13, 16-20 and 25 under 35 U.S.C. 103(a) as being unpatentable over Lee et al. (U.S. Publication No. 2003/0135465 A1), in view of Sitbon et al. (U.S. Patent No. 5,568,487), in view of Schwabe (U.S. Patent No. 6,651,186), in view of OPT (Optimizations), and further in view of Moeller (U.S. Patent No. 5,473,777).

Group #1: Claim 2

For reasons similar to those set forth with respect to Issue #3, Group #1, appellant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, as noted above.

Group #2: Claims 3, 5, 9-10, 12, 16-17, 19, and 25

For reasons similar to those set forth with respect to Issue #2, Group #1, appellant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, as noted above.

Group #3: Claims 4, 11, and 18

The Examiner has relied on the following Moeller excerpt to make a prior art showing of appellant's claimed "wherein the extractor code is further adapted for interfacing with the second application program interface" (see Claim 4 et al.).

"The code library 110 may represent multiple code libraries (not shown) related to the wrapper 120, wherein each of the code libraries include the computer program logic for one of the object-oriented classes of the class library 402." (Col. 9, lines 1-5)

In addition, the Examiner has specifically argued that the "extractor code is [the] wrapper for implementing the API of the class library." Appellant respectfully disagrees. In particular, the wrapper disclosed in Moeller simply "provides an object-oriented interface to a procedural operating system having a native procedural interface" (Col. 6, lines 38-40). Further, the excerpt relied on by the Examiner only discloses "multiple code libraries (not shown) related to the wrapper." Clearly, a wrapper that provides an interface to an operating system and that is related to code libraries, as in Moeller, fails to support the Examiner's allegation that the "extractor code is [the] wrapper for implementing the API of the class library," as noted by the Examiner.

Furthermore, appellant respectfully asserts that above excerpt from Moeller does not even suggest that "the extractor code is further adapted for interfacing with the second application program interface," and especially not where the "extractor code [is] adapted for extracting the data," in the context claimed by appellant.

Appellant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, as noted above.

Group #4: Claims 6, 13 and 20

The Examiner has relied on the following Moeller excerpt to make a prior art showing of appellant's claimed "wherein the location in memory is where a routine is stored for allowing the selected applications to access the network" (see Claim 6 et al.).

"The library server processes the request by accessing the desired computer program logic from the code library and sending the desired computer program logic to the area of memory designated by the destination address." (Col. 9, lines 17-20)

Appellant respectfully asserts that such excerpt fails to even suggest any sort of “location in memory...where a routine is stored for allowing the selected applications to access the network” (emphasis added), as claimed. In particular, merely disclosing that a library server sends logic to an area of memory, as in Moeller, simply does not meet the specificity of appellant’s claims, as noted above.

Appellant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, as noted above.

Issue #5

The Examiner has rejected Claims 7, 14 and 21 under 35 U.S.C. 103(a) as being unpatentable over Lee et al. (U.S. Publication No. 2003/0135465 A1), in view of Sitbon et al. (U.S. Patent No. 5,568,487), in view of Schwabe (U.S. Patent No. 6,651,186), and further in view of Alexander et al. (U.S. Patent No. 6,748,343).

Group #1: Claims 7, 14 and 21

The Examiner has relied on the following excerpt from Alexander to make a prior art showing of appellant’s claimed “allowing a user to select the applications to be allowed to access the network via the second application program interface.”

“...a computer display operable to generate a user interface for obtaining a user selection of client, premises, location, monitoring device, and processing rule data and to transmit the data to the processing server...” (Col. 19, lines 53-56)

Appellant respectfully asserts that the above excerpt from Alexander does not teach any sort of applications, as appellant claims, but instead only discloses selecting items associated with transmitting data, such as a client, location, etc. In addition, there is no mention in the above excerpt of any type of second application program interface, as claimed, especially where such “second application program interface [is] adapted for precluding the applications from accessing the network,” in the context claimed (see independent claim for context). Simply nowhere in the above excerpt relied on by the Examiner is there any mention of “allowing a user

to select the applications to be allowed to access the network via the second application program interface" (emphasis added), as claimed.

Appellant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, as noted above.

Issue #6

The Examiner has rejected Claim 27 under 35 U.S.C. 103(a) as being unpatentable over Lee et al. (U.S. Publication No. 2003/0135465 A1), in view of Sitbon et al. (U.S. Patent No. 5,568,487), in view of Schwabe (U.S. Patent No. 6,651,186), and further in view of Michael Norton (Basics of Network Segmentation: Switching and Bridging).

Group #1: Claim 27

The Examiner has relied on Michael Norton's disclosure of a network card that attempts to transmit frames onto a wire (Consuming bandwidth: lines 4-5) to make a prior art showing of appellant's claimed technique "wherein the second application program interface is adapted for precluding the applications from accessing the network utilizing a network card."

Appellant respectfully asserts that Michael Norton simply discloses a network card that attempts to transmit frames, which does not meet, and even *teaches away* from, appellant's specific claim language. In particular, the network card claimed by appellant is utilized for "the second application program interface... precluding the applications from accessing the network" (emphasis added), as claimed.

Appellant respectfully asserts that at least the first and third element of the *prima facie* case of obviousness has not been met, as noted above.

Issue #7

The Examiner has rejected Claim 28 under 35 U.S.C. 103(a) as being unpatentable over Lee et al. (U.S. Publication No. 2003/0135465 A1), in view of Sitbon et al. (U.S. Patent No. 5,568,487), in view of Schwabe (U.S. Patent No. 6,651,186), and further in view of Bermudez et al. (U.S. Patent No. 6,874,149).

Group #1: Claim 28

For reasons similar to those set forth with respect to Issue #2, Group #1, appellant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, as noted above.

In view of the remarks set forth hereinabove, all of the independent claims are deemed allowable, along with any claims depending therefrom.

VIII CLAIMS APPENDIX (37 C.F.R. § 41.37(c)(1)(viii))

The text of the claims involved in the appeal (along with associated status information) is set forth below:

1. (Previously Presented) A method for management of network access on a per application basis, comprising:
 - (a) selecting applications from a group of applications adapted for working in conjunction with a first application program interface to gain access to a network, the first application program interface adapted for permitting the applications to gain access to the network;
 - (b) installing a second application program interface adapted for precluding the applications from accessing the network; and
 - (c) wrapping the selected applications for allowing the selected applications to access the network via the second application program interface, where the selected applications would otherwise be precluded network access by the second application program interface.
2. (Previously Presented) The method as recited in claim 1, wherein the selected applications are wrapped with a wrapper adapted for compressing data in a portable executable (PE) image that provides compression of data associated with the applications.
3. (Original) The method as recited in claim 2, wherein the wrapper equips the compressed data with extractor code adapted for extracting the data in the PE image.
4. (Original) The method as recited in claim 3, wherein the extractor code is further adapted for interfacing with the second application program interface.
5. (Original) The method as recited in claim 2, wherein the wrapper is further adapted for identifying a location in memory.
6. (Original) The method as recited in claim 5, wherein the location in memory is where a routine is stored for allowing the selected applications to access the network.

7. (Original) The method as recited in claim 1, and further comprising allowing a user to select the applications to be allowed to access the network via the second application program interface.
8. (Previously Presented) A computer program product for management of network access on a per application basis, comprising:
 - (a) computer code for selecting applications from a group of applications adapted for working in conjunction with a first application program interface to gain access to a network, the first application program interface adapted for permitting the applications to gain access to the network;
 - (b) computer code for installing a second application program interface adapted for precluding the applications from accessing the network; and
 - (c) computer code for wrapping the selected applications for allowing the selected applications to access the network via the second application program interface, where the selected applications would otherwise be precluded network access by the second application program interface.
9. (Previously Presented) The computer program product as recited in claim 8, wherein the selected applications are wrapped with a wrapper adapted for compressing data in a portable executable (PE) image that provides compression of data associated with the applications.
10. (Original) The computer program product as recited in claim 9, wherein the wrapper equips the compressed data with extractor code adapted for extracting the data in the PE image.
11. (Original) The computer program product as recited in claim 10, wherein the extractor code is further adapted for interfacing with the second application program interface.
12. (Original) The computer program product as recited in claim 9, wherein the wrapper is further adapted for identifying a location in memory.

13. (Original) The computer program product as recited in claim 12, wherein the location in memory is where a routine is stored for allowing the selected applications to access the network.
14. (Original) The computer program product as recited in claim 8, and further comprising computer code for allowing a user to select the applications to be allowed to access the network via the second application program interface.
15. (Previously Presented) A system for management of network access on a per application basis, comprising:
 - (a) logic for selecting applications from a group of applications adapted for working in conjunction with a first application program interface to gain access to a network, the first application program interface adapted for permitting the applications to gain access to the network;
 - (b) logic for installing a second application program interface adapted for precluding the applications from accessing the network; and
 - (c) logic for wrapping the selected applications for allowing the selected applications to access the network via the second application program interface, where the selected applications would otherwise be precluded network access by the second application program interface.
16. (Previously Presented) The system as recited in claim 15, wherein the selected applications are wrapped with a wrapper adapted for compressing data in a portable executable (PE) image that provides compression of data associated with the applications.
17. (Original) The system as recited in claim 16, wherein the wrapper equips the compressed data with extractor code adapted for extracting the data in the PE image.
18. (Original) The system as recited in claim 17, wherein the extractor code is further adapted for interfacing with the second application program interface.

19. (Original) The system as recited in claim 16, wherein the wrapper is further adapted for identifying a location in memory.
20. (Original) The system as recited in claim 19, wherein the location in memory is where a routine is stored for allowing the selected applications to access the network.
21. (Original) The system as recited in claim 15, and further comprising logic for allowing a user to select the applications to be allowed to access the network via the second application program interface.
22. (Previously Presented) A system for management of network access on a per application basis, comprising:
 - (a) means for selecting applications from a group of applications adapted for working in conjunction with a first application program interface to gain access to a network, the first application program interface adapted permitting the applications to gain access to the network;
 - (b) means for installing a second application program interface adapted for precluding the applications from accessing the network; and
 - (c) means for wrapping the selected applications for allowing the selected applications to access the network via the second application program interface, where the selected applications would otherwise be precluded network access by the second application program interface.
23. (Previously Presented) A data structure stored in memory for management of network access on a per application basis, comprising:
 - (a) application program interface object for precluding a plurality of applications from accessing a network, wherein a permitting application program interface is adapted for permitting the applications to gain access to the network; and
 - (b) a wrapper object for wrapping selected applications for allowing the selected applications to access the network via the application program interface object, where the selected applications would otherwise be precluded network access by the application program interface object.

24. (Previously Presented) A method for management of network access on a per application basis, comprising:
 - (a) installing a precluding application program interface adapted for precluding a plurality of applications from accessing a network, wherein a permitting application program interface is adapted for permitting the applications to gain access to the network; and
 - (b) wrapping a plurality of selected applications for allowing the selected applications to access the network via the precluding application program interface, where the selected applications would otherwise be precluded network access by the precluding application program interface.
25. (Previously Presented) The method as recited in claim 2, wherein the PE image includes a header, a stub program, a file signature, a .text section header, a .bss section header, a .rdata section header, and a .debug section header.
26. (Previously Presented) The method as recited in claim 1, wherein the applications include a word processor application, a database program, a browser program, a development tool program, a drawing program, an image editing program, and a communication program.
27. (Previously Presented) The method as recited in claim 1, wherein the second application program interface is adapted for precluding the applications from accessing the network utilizing a network card.
28. (Previously Presented) The method as recited in claim 1, wherein the second application program interface includes a modified copy of the first application program interface.
29. (Previously Presented) The method as recited in claim 1, wherein the second application program interface is separate from the first application program interface.

IX EVIDENCE APPENDIX (37 C.F.R. § 41.37(c)(1)(ix))

There is no such evidence.

X RELATED PROCEEDING APPENDIX (37 C.F.R. § 41.37(c)(1)(x))

Since no decision(s) has been rendered in such proceeding(s), no material is included in this Related Proceedings Appendix.

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 971-2573. For payment of any additional fees due in connection with the filing of this paper, the Commissioner is authorized to charge such fees to Deposit Account No. 50-1351 (Order No. Order No. NA11P096).

Respectfully submitted,

By: /KEVINZILKA/ Date: May 14, 2007

Kevin J. Zilka
Reg. No. 41,429

Zilka-Kotab, P.C.
P.O. Box 721120
San Jose, California 95172-1120
Telephone: (408) 971-2573
Facsimile: (408) 971-4660